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ALEXANDER L. STEVAS,
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No. 83-1205

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

vs.

ROBERT HICKS,

Appellant.

On Appeal from the
Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM

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QUESTIONS PRESENTED

1. Whether the instant appeal fails to present a "final judgment or decree" for which this Court's jurisdiction pursuant to 28 U.S.C. §1257(2) is properly invoked?

2. Whether the instant appeal does not present a substantial federal question?

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No.

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COMMONWEALTH OF PENNSYLVANIA,

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vs.

ROBERT HICKS,

Appellant.

On Appeal from the
Supreme Court of Pennsylvania

MOTION TO DISMISS OR AFFIRM

Appellee in the above-captioned case moves to dismiss and/or affirm on the grounds that the appeal does not present a "final order or decree" for which this Court's jurisdiction, pursuant to 28 U.S.C. §1257(2), is properly invoked and that the question presented does not present a substantial federal question.

JURISDICTION

Appellant has filed this direct appeal from the order of the Supreme Court of Pennsylvania, Western District, No. 1 W.D. Appeal Docket, 1983, entered on October 19, 1983. That Court reversed a pre-trial order of the Court of Common Pleas of Allegheny County quashing a criminal information charging appellant under Pennsylvania's homicide by vehicle statute, 75 Pa. C.S. §3732. The Pennsylvania Supreme Court, in reversing the trial court's order remanded the matter for trial.[1] In this procedural status your appellee raises the question whether the jurisdiction of this Court is properly invoked and/or should be exercised.

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[1] Trial in this matter is scheduled, at the time of this writing, for February 15, 1984. Appellant has not sought a stay of those proceedings.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONSTITUTION AMENDMENT XIV

Section 1. Citizens of the United States

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

75 P.S. §3732. Homicide by vehicle

Any person who unintentionally causes the death of another person while engaged in the violation of any law of this Commonwealth or municipal ordinance apply to the operation or

use of a vehicle or to the regulation of traffic is guilty of homicide by vehicle, a misdemeanor of the first degree, when the violation is the cause of death.

1976, June 17, P.L. 162, No. 81 §1, eff. July 1, 1977.

18 P.S. §2504. Involuntary manslaughter

(a) General rule.-- A person is guilty of involuntary manslaughter when a direct result of the doing of an unlawful act in a reckless or grossly negligent manner, he causes the death of another person.

(b) Grading.-- Involuntary manslaughter is a misdemeanor of the first degree.

1972, Dec. 6, P.L. 1482, No. 334, §1, effective June 6, 1973.

STATEMENT OF THE CASE

Appellant seeks to appeal to this Court from the Order and Opinion of the Supreme Court of Pennsylvania entered in the matter

reversing the pre-trial order of the lower court quashing a criminal information filed against appellant.

Appellant was charged with violations of Pennsylvania's homicide by vehicle statute, 75 Pa. C.S. §3732, and driving under the influence statute, 75 Pa. C.S. §3731, as a result of an incident on April 3, 1982. Pre-trial motions filed by appellant challenged, inter alia, the constitutionality of the homicide by vehicle statute as a denial of equal protection and due process in the classification of the offense viz a viz, involuntary manslaughter, 18 Pa. C.S. §2504. Appellant also filed a Motion for Writ of Habeas Corpus as to the charge of driving under the influence of alcohol or controlled substance. On November 30, 1982, the pre-trial hearing court granted appellant's pre-trial motion to quash the information and denied the motion for writ of habeas corpus as to the

driving under the influence charge. The Commonwealth filed an appeal to the Supreme Court of Pennsylvania from the order granting the motion to quash the criminal information pursuant to Pennsylvania law, 42 Pa. C.S. §722(7), at No. 1 W.D. Appeal Docket, 1983. Appellant sought to appeal the order denying the motion for a writ of habeas corpus, but that appeal, at No. 3 W.D. Appeal Docket, 1983, was quashed by the Supreme Court of Pennsylvania on motion of the Commonwealth.[2]

A unanimous Pennsylvania Supreme Court reversed the order of the trial court and remanded the matter for trial. In so doing, the Pennsylvania Court determined that the

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[2] The Commonwealth notes that the notice of appeal filed by appellant in this Court is designated as from the order at No. 3 W.D. Appeal Docket, 1983, dated October 19, 1983. The Commonwealth does not dispute appellant's true intent is to appeal from the order at No. 1 W.D. Appeal Docket, 1983.

statute at issue, 75 Pa. C.S. §3732 did not violate either Fourteenth Amendment equal protection principles or equivalent state constitutional provisions since the legislative classification was rationally related to a legitimate state goal.

ARGUMENT

I

THE INSTANT APPEAL FAILS TO PRESENT A "FINAL JUDGMENT OR DECREE" FOR WHICH THIS COURT'S JURISDICTION PURSUANT TO 28 U.S.C. §1257(2) IS PROPERLY INVOKED.

Appellant seeks to invoke the provisions of 28 U.S.C. §1257(2) as the basis for this Court's jurisdiction to entertain an appeal from the reversal of a pre-trial order in a state Court proceeding on a federal question, where the matter has been remanded for further proceedings, including trial, where other state and federal issues are to be resolved.

Appellant raised additional issues in his pre-trial motion which were not reviewed

by the Pennsylvania Supreme Court. A challenge to the sufficiency of the evidence was raised by way of a state habeas corpus motion which was denied by the pre-trial hearing court and not then reviewed by the Pennsylvania Supreme Court. Also, appellant additionally raised allegations of cruel and unusual punishment under the Eighth Amendment of the United States Constitution and Article 1, Section 13 of the Pennsylvania Constitution arising from enforcement of the statute at issue. This argument was not ruled upon at the trial level, nor by the Supreme Court of Pennsylvania, since the issue lacked ripeness. Thus, your appellee submits, additional issues, both federal and non-federal, remain to be decided below.

In this procedural posture, therefore, your appellee submits that the instant matter fits into that category of cases

described as the fourth categroy of cases where the highest court of a State has finally determined a federal issue in a particular case, but in which there are further proceedings in the lower state courts to come. In Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 482-483 (1975) this Court found its jurisdiction would be properly invoked under circumstances similar to those of the instant case where "a refusal immediately to review the state court decision might seriously erode federal policy."

It is submitted that the jurisdiction of this Honorable Court is not properly invoked under the circumstances of the instant matter where appellant may prevail on other federal or non-federal grounds either at his trial on February 15, 1984, or in another state court proceeding, and no erosion of federal policy will occur in the meantime.

II

THE INSTANT APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

The Jurisdictional Statement filed by appellant fails to establish that a substantial federal question is involved in the instant appeal.

Appellant seeks to have this Court decide that the Pennsylvania legislature denies the appellant equal protection of the laws by defining a crime of homicide by vehicle to include a culpability requirement that differs from that applicable to other unintentional homicides committed in Pennsylvania with other instrumentalities. It is clear that classification of homicides committed unintentionally but caused by a violation of the motor vehicle code is reasonably related to a legitimate state interest, the reduction of highway fatalities. Since the classification is so

clearly a proper one for the Commonwealth of Pennsylvania to make in the exercise of the legislative function, no substantial federal question arises under the equal protection clause of the Fourteenth Amendment.

This Court has long recognized that the regulation of the use of motor vehicles is an area where a state has a legitimate interest arising from the serious dangers posed to persons and property by their operation. Hess v. Pawlowski, 274 U.S. 352 (1927).

This Court failed to find a substantial federal question involving equal protection arising from a state statutory scheme that provided for the same elements, but differing penalties, in two forms of unintentional homicide that may be committed with an automobile as an instrumentality. People v. McCollough, 47 Ill. 2d 440, 313 N.E. 2d 462 (1974), appeal

dismissed McCullough v. Illinois, 419 U.S. 1043 (1974). Similarly it is submitted, a substantial federal question based on equal protection is not presented in the instant matter where separate distinct elements are defined for homicides unintentionally committed through use of a motor vehicle in violation of the vehicle code and those unintentional homicides committed with other instrumentalities.

CONCLUSION

The instant matter does not represent a proper invocation of this Court's jurisdiction, nor does it present a substantial federal question. On that basis, your appellee respectfully moves this Court to dismiss the instant appeal and/or affirm the judgment of the Supreme Court of Pennsylvania.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I am this 25th day of January, 1984, serving the following persons by first class mail, postage prepaid, with three (3) copies of the Motion to Dismiss or Affirm, which service satisfies the requirements of Rule 28:

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